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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EDUARDO I.T., et al.,)	CASE NO. 4:22-cv-05333-DMR
)	
Plaintiffs,)	
)	ANSWER TO COMPLAINT FOR DAMAGES
v.)	UNDER THE FEDERAL TORT CLAIMS ACT
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	The Hon. Donna M. Ryu

1 Defendant, the United States of America (“Defendant”), by and through undersigned counsel,
2 respectfully submits the following Answer to Plaintiffs’ Complaint for Damages Under the Federal Tort
3 Claims Act (ECF No. 1) (hereinafter “Complaint”).

4 **GENERAL ANSWER**

5 a. Plaintiffs quote various documents throughout their Complaint, including United States
6 District Court cases, Congressional statutes, reports and testimony, new media articles, and investigatory
7 reports from federal agencies. Defendant responds to these citations as follows:

8 i. In the specific answers that follow, to the extent a paragraph in Plaintiffs’
9 Complaint cites or otherwise references one of these documentary sources solely as support for a factual
10 allegation, Defendant answers the factual allegation in accordance with Federal Rule of Civil Procedure
11 8 by either admitting, denying, or pleading lack of sufficient information with respect to that factual
12 allegation. The citation of the source underlying the factual allegation is in and of itself not a factual
13 allegation requiring a response.

14 ii. To the extent a paragraph in Plaintiffs’ Complaint contains a factual allegation,
15 purports to provide a quotation from a documentary source in whole or in part in a manner requiring a
16 response as to its truthfulness or accuracy, or specifically describes a finding or conclusion of a report,
17 policy, or other cited source, Defendant answers those allegations in accordance with Rule 8.

18 b. Insofar as Plaintiffs’ Complaint contains allegations regarding the subjective mindset,
19 knowledge, or motivation of various Executive Branch officials and employees, those allegations are
20 denied throughout the Answer.

21 c. Insofar as allegations relate to or reference the identities, ages, relationships, and
22 nationalities of Plaintiffs, those allegations are denied throughout the Answer on the ground that
23 Defendant lacks information sufficient to form a belief as to the allegations because Plaintiffs are
24 proceeding pseudonymously. Therefore, any specific admissions or denials, in full or in part, of such
25 allegations are qualified by the provision that Defendant is answering based on its belief, but lack of
26 certainty, as to the identities of Plaintiffs.

SPECIFIC ANSWERS BY PARAGRAPH**INTRODUCTION**

1
2
3 1. Defendant lacks information sufficient to form a belief as to whether the Plaintiff families
4 are indigenous Guatemalans. Defendant admits that, for a limited period of time in 2018, the United
5 States implemented a Department of Justice (“DOJ”) initiated Zero-Tolerance Policy that resulted in the
6 separation of some families at the United States–Mexico border. Defendant denies that it had a “Family
7 Separation Policy.” Defendant denies the purpose of the Zero-Tolerance Policy was to cause families
8 emotional harm. Defendant lacks information sufficient to form a belief as to the intent of those
9 individuals who illegally entered the United States at the U.S.-Mexico border. Defendant lacks
10 information sufficient to form a belief as the truth of any remaining parts of this allegation, and on that
11 basis denies them.

12 2. Defendant admits that this case concerns the three Plaintiff families identified in the
13 Complaint. Defendant denies that it had a “Family Separation Policy.” Defendant lacks information
14 sufficient to form a belief as to Plaintiffs’ subjective suffering. Defendant admits that either the persons
15 believed to be Plaintiff children, or the persons believed to be their fathers, represented to Defendant that
16 Plaintiff children were 6, 15 and 16 years old at the time of separation. Defendant lacks information
17 sufficient to form a belief as to the subjective thoughts and opinions of the Plaintiffs. Defendant denies
18 the remaining allegations.

19 3. Defendant denies that it had a “Family Separation Policy.” Defendant admits there was a
20 DOJ-initiated Zero-Tolerance policy but denies the purpose(s) were as alleged in this paragraph.
21 Defendant lacks information sufficient to form a belief as to the subjective intent of unidentified
22 “policymakers” as alleged in this paragraph, and on that basis denies them.

23 4. Defendant denies that the government’s conduct was tortious. Defendant denies that it
24 had a “Family Separation Policy.” Defendant denies that its purpose in litigating this and other cases
25 involving the Zero-Tolerance Policy is to waste court, attorney, litigant, and agency time and resources,
26 and avers that its purpose is instead to protect the interests of the United States of America. The
27 remaining portion of this paragraph contains Plaintiffs’ characterization of this civil action, to which no
28 response is required.

JURISDICTION, VENUE, AND INTRA-DISTRICT ASSIGNMENT

5. The allegation that this Court has subject matter jurisdiction is not a statement of fact but a conclusion of law to which no response is required. To the extent a response is required, Defendant denies this allegation. Defendant admits that Plaintiffs bring their suit under the Federal Tort Claims Act (“FTCA”), and that the FTCA contains an administrative exhaustion requirement. Defendant admits that Plaintiffs filed administrative claims to which the relevant federal agencies did not respond within six months.

6. Defendant lacks information sufficient to form a belief about the current residence of Plaintiffs. The remaining allegations are not statements of fact but are conclusions of law to which no answer is required. To the extent an answer is required, Defendant denies these allegations.

7. Defendant denies that this action arises in Alameda County and is therefore proper for assignment in the San Francisco/Oakland Division of this District.

PARTIES

8. Defendant admits that the person believed to be Eduardo I.T. (“Eduardo I.T.”) has a minor son, the person believed to be Edwin E.I.I. (“Edwin”), and that Edwin was represented to be 16 years old when he was separated by government officials from his father. Defendant further admits that Eduardo I.T. and Edwin are from Guatemala but lacks information sufficient to form a belief about whether they are indigenous Maya Q’eqchi’ or the location of their current residence. Defendant admits that Eduardo I.T. applied for asylum in the United States; that Edwin has Special Immigrant Juvenile (“SIJ”) classification and has applied for lawful permanent residence status; and that both Eduardo I.T. and Edwin applied for parole-in-place. Defendant denies that the Asylum Office has not yet adjudicated Eduardo I.T.’s asylum application. To the extent Plaintiffs are alleging that SIJ classification grants Edwin any lawful status in the United States, Defendant denies this claim.

9. Defendant admits that the person believed to be Ignacio P.G. (“Ignacio P.G.”) has a minor son, the person believed to be Leonel Y.P.G. (“Leonel”), and that they are from Guatemala. Defendant further admits that Leonel was represented to be 6 years old when he was separated by government officials from his father. Defendant lacks information sufficient to form a belief about whether Ignacio P.G. and Leonel are indigenous Maya Mam, or the location of their current residence.

1 Defendant lacks information sufficient to form a belief about the subjective intent of Ignacio P.G. in
2 bringing this lawsuit and the current residence of Ignacio P.G. and his son. Defendant admits that
3 Ignacio P.G. is in removal proceedings and that he applied for asylum in the United States.

4 10. Defendant admits that the person believed to be Benjamin J.R. (“Benjamin J.R.”) has a
5 son, the person believed to be William A.J.M. (“William”), and that they are from Guatemala.
6 Defendant lacks information to form a belief about whether Benjamin J.R. and William are indigenous
7 Maya Mam. Defendant admits that William was represented to be 15 years old when he was separated
8 by government officials from his father. Defendant lacks information sufficient to form a belief about
9 the current residence of Benjamin J.R. and his son. Defendant admits that Benjamin J.R. applied for
10 asylum in the United States and that William has SIJ classification. To the extent Plaintiffs allege that
11 SIJ classification grants William any lawful status in the United States, Defendant denies this claim.

12 11. These allegations are not statements of fact but conclusions of law to which no response
13 is required. To the extent a response is deemed required, Defendant admits that the United States of
14 America is the appropriate defendant in an action brought under the FTCA.

15 12. These allegations are not statements of fact but conclusions of law to which no response
16 is required. To the extent a response is deemed required, Defendant lacks information sufficient to form
17 a belief as to whether every federal official referenced in the Complaint was at all relevant times an
18 employee of the United States, working within the scope and course of their employment with the
19 federal agencies listed in paragraph 11 of the Complaint.

20 13. Defendant admits that employees of U.S. Customs and Border Protection (“CBP”)
21 separated noncitizen adults and minors. Defendant further admits that employees of CBP and U.S.
22 Immigration and Customs Enforcement (“ICE”) detained individuals at facilities either owned or
23 contracted by CBP and ICE. Defendant lacks information sufficient to form a belief as to the remaining
24 allegations, and on that basis denies them.

25 14. Defendant admits that the U.S. Department of Health and Human Services (“HHS”)
26 Office of Refugee Resettlement (“ORR”) has custody and provides care for each Unaccompanied Alien
27 Child (“UAC”), defined by statute as a child who has no lawful immigration status in the United States;
28 has not attained 18 years of age; and, with respect to whom, there is no parent or legal guardian in the

1 United States, or no parent or legal guardian in the United States available to provide care and physical
2 custody, who is referred to ORR. ORR places Unaccompanied Children (“UCs”) in the least-restrictive
3 setting through its network of state licensed ORR-funded care providers that ORR maintains cooperative
4 agreements with for housing and services. While in the custody of HHS, the Plaintiffs children were
5 placed with ORR-funded care providers. The remaining allegations are denied.

6 15. Defendant denies this allegation.

7 **FACTUAL ALLEGATIONS**

8 16. Defendant denies that it had a “Family Separation Policy.” Defendant admits that the
9 Zero-Tolerance Policy was a policy. Defendant denies the rest of this paragraph.

10 17. These allegations are not statements of fact but conclusions of law to which no response
11 is required.

12 18. Defendant denies the first sentence of this paragraph and the last sentence of this
13 paragraph. The remaining allegations are not statements of fact but conclusions of law to which no
14 response is required.

15 19. Defendant admits that Donald Trump became President of the United States in 2017.
16 Defendant admits that the quoted words are contained in the cited news media article purporting to
17 contain tweets from President Trump. Defendant lacks information sufficient to form a belief as to the
18 accuracy of the referenced tweets or any of the remaining allegations, and on that basis denies them.

19 20. Defendant denies that in early 2017 federal government officials began considering a
20 “new, unprecedented” “family separation initiative” for the purpose of causing asylum seekers “such
21 extreme emotional distress” that they would abandon their asylum claims. Defendant lacks information
22 sufficient to form a belief as to the remaining allegations, and on that basis denies them.

23 21. Defendant admits the existence of this document and admits the cited quote is included
24 within the 159-page Advisory Committee report. Defendant lacks information sufficient to form a belief
25 as to the truth or accuracy of the cited quote, and on that basis denies the remaining allegations.

26 22. Paragraph 22 contains Plaintiffs’ citation to a media source to which no response is
27 required. To the extent a response is deemed necessary, Defendant lacks information sufficient to form a
28 belief as to these allegations, and on that basis denies them.

23. Defendant lacks information sufficient to form a belief as to the first sentence of this allegation, and on that basis denies it. The remaining portion of Paragraph 23 contains citations two DOJ Office of the Inspector General (“DOJ OIG”) reports to which no response is required. To the extent a response is deemed necessary, Defendant responds that the citations in question speak for themselves, are best evidence of their contents, and should be read in full context.

24. Paragraph 24 contains a citation to a media report, to which no response is required. To the extent a response is deemed necessary, Defendant responds that the citations in question speak for themselves, are best evidence of their contents, and should be read in full context. Defendant lacks information sufficient to form a belief as to the accuracy of the cited media report or its contents.

25. Defendant denies that it had a “Family Separation Policy.” Defendant admits that on March 6, 2017, John Kelly was the Secretary of Homeland Security. Paragraph 25 contains citations to a congressional staff report and to a media report, to which no response is required. To the extent a response is deemed necessary, Defendant responds that citations in question speak for themselves, are best evidence of their contents, and should be read in full context. Defendant admits that the partial quotation contained in the first sentence of paragraph 25 and the quotation from an email excerpt from an unidentified DHS official, both of which are referenced in this paragraph, are contained in the cited 551-page Majority Staff Report for the Committee of the Judiciary of the U.S. House of Representatives dated October 2020 (“2020 House Report”). Defendant lacks information sufficient to form a belief as to accuracy of either quotation or the referenced email and on that basis denies the allegation. Defendant further admits that the cited March 3, 2017 Reuters news article does include the information as stated in the last sentence of paragraph 25. Defendant lacks information sufficient to form a belief as to accuracy of the information cited in the March 3, 2017 Reuters article and on that basis denies the allegation.

26. Defendant denies that there was a Family Separation pilot program. Defendant admits that that in 2017 there was a prosecution initiative in the U.S. Border Patrol El Paso sector that resulted in the separations of some family units. Defendant denies the remaining allegations.

27. Defendant denies that there was a Family Separation policy or pilot program. Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol El Paso sector that resulted in the separations of some family units. Defendant admits the 93-page DOJ OIG Report dated

1 January 2021 (“OIG Report”) includes the partial quoted statements as alleged in the second sentence of
2 paragraph 27. Plaintiffs’ characterizations of these quotes are not statements of facts for which a
3 response is required. To the extent a response is deemed necessary, Defendant responds that citations in
4 question speak for themselves, are best evidence of their contents, and should be read in full context.
5 Defendant lacks information sufficient to form a belief as to accuracy of information in these quotes or
6 any of the remaining allegations and on that basis denies them.

7 28. Defendant denies that there was a Family Separation pilot program. Defendant admits
8 that in 2017 there was a prosecution initiative in the U.S. Border Patrol El Paso sector that resulted in
9 the separations of some family units. Defendant admits there was some coordination between the United
10 States Attorney’s office for the Western District of Texas and immigration officials on the 2017
11 prosecution initiative in the U.S. Border Patrol El Paso sector. To the extent Plaintiffs allege some
12 additional coordination, Defendant lacks information sufficient to form a belief concerning coordination
13 between the United States Attorney’s office and immigration officials.

14 29. Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol
15 El Paso sector that resulted in parents being prosecuted for illegal entry at the United States–Mexico
16 border. Defendant denies that the purpose of this prosecution initiative was to separate “[parents] from
17 their children.” Defendant lacks information sufficient to form a belief as to the remaining allegations,
18 and on that basis denies them.

19 30. Defendant denies the allegation that there was a Family Separation pilot program.
20 Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol El Paso sector.
21 The allegation that immigration officials were exploiting provisions of the TVPRA as improper pretext
22 to “justify seizing long-term custody” of children from their parents is not a statement of fact but
23 conclusion of law to which no response is required. To the extent a response is required, Defendant
24 denies these allegations. Defendant admits that some children were separated from their parents during
25 the 2017 prosecution initiative. Defendant further admits that, as the result of their parent(s) being
26 referred for criminal prosecution, some children were classified as UCs and referred to ORR for
27 placement with one of their ORR-funded care providers. Paragraph 30 also includes citations to statutes,
28

1 to which no response is required. Defendant lacks information sufficient to form a belief as to the
2 remaining allegations, and on that basis denies them.

3 31. Defendant denies the allegation that there was a Family Separation pilot program.
4 Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol El Paso sector
5 that resulted in some parents being prosecuted for misdemeanor illegal entry and held in the custody of
6 the U.S. Marshals Service. As a result of their parent(s) being referred for criminal prosecution, some
7 children were classified as UCs and referred to ORR for placement with one of their ORR-funded care
8 providers. Paragraph 31 also contains a citation to a 2021 DOJ OIG report, to which no response is
9 required. To the extent a response is deemed necessary, Defendant responds that the citations in question
10 speak for themselves, are best evidence of their contents, and should be read in full context. Defendant
11 lacks information sufficient to form a belief as to the remaining allegations, and on that basis denies
12 them.

13 32. Defendant denies the allegation that there was a Family Separation pilot program.
14 Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol El Paso sector
15 that resulted in the separations of some family units. Defendant further admits that, as a result of their
16 parent(s) being referred for criminal prosecution, some children were classified as UCs and referred to
17 ORR for placement with one of their ORR-funded care providers. Defendant lacks information
18 sufficient to form a belief as to the remaining allegations, and on that basis denies them.

19 33. Defendant denies the allegation that there was a Family Separation pilot program.
20 Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol El Paso sector
21 that resulted in the separations of some family units. Paragraph 33 includes a citation to a 2021 DOJ
22 OIG report, to which no response is required. To the extent a response is deemed necessary, Defendant
23 responds that citations in question speak for themselves, are best evidence of their contents, and should
24 be read in full context. Defendant admits that the partial quotations in this paragraph are contained in the
25 cited 93-page DOJ OIG Report. Defendant lacks information sufficient to form a belief as to accuracy of
26 these quotations or the information contained therein or the remaining allegations, and on that basis
27 denies them.
28

1 34. Defendant denies the allegation that there was a Family Separation pilot program.
2 Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol El Paso sector
3 that resulted in the separations of some family units. Defendant lacks information sufficient to form a
4 belief as to the subjective knowledge of unidentified high-ranking DOJ officials concerning the
5 “emotional damage” of separation. Paragraph 34 refers to information “documented by the DOJ’s
6 Inspector General,” without specifically referencing a specific report or source of the information. To
7 the extent this intended reference is to the DOJ OIG report previously cited in footnote 21 of the
8 Complaint, then Defendant notes that this is a citation to an OIG report to which no response is
9 necessary. Should a response be deemed required, Defendant admits that the 93-page DOJ OIG Report
10 references briefings to high-ranking policymakers about the pilot program. Defendant lacks information
11 sufficient to form a belief as to the existence or contents of these briefings or the truth of the information
12 alleged in paragraph 34 that such briefings contained, and on that basis denies the allegation.

13 35. Defendant denies the allegation that there was a Family Separation pilot program.
14 Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol El Paso sector
15 that resulted in the separations of some family units. Paragraph 35 contains citations to a congressional
16 report, to which no response is required. To the extent a response is deemed necessary, Defendant
17 responds that citations in question speak for themselves, are best evidence of their contents, and should
18 be read in full context. Defendant admits that the 2020 House Report cited by this paragraph contains
19 information detailing complaints to the DHS Office for Civil Rights and Civil Liberties (CRCL)
20 concerning family separations that occurred prior to May 2018. Defendant lacks information sufficient
21 to form a belief as to accuracy of this information. Plaintiffs’ characterizations of this information are
22 not statements of facts for which a response is required.

23 36. Defendant denies the allegation that there was a Family Separation pilot program.
24 Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol El Paso sector
25 that resulted in the separations of some family units, but denies that it was terminated in 2018. Paragraph
26 36 contains a citation to a DOJ OIG report, to which no response is required. To the extent a response is
27 deemed necessary, Defendant responds that the citation in question speaks for itself, is the best evidence
28 of its contents, and should be read in full context. Defendant admits that the DOJ OIG Report cited in

1 this paragraph contains the purported partial quotation from Acting U.S. Attorney Bash. Defendant lacks
2 information sufficient to form a belief as to accuracy of this quotation or the information contained
3 within. Plaintiffs' characterizations of this quotation are not statements of facts for which a response is
4 required.

5 37. Defendant denies that it had a "Family Separation Policy." Defendant admits that
6 Commander Jonathan White was a career officer in the U.S. Public Health Service Commissioned
7 Corps. Paragraph 37 contains a citation to congressional hearing transcript, to which no response is
8 required. To the extent a response is required, Defendant admits that the partial quotation cited in this
9 paragraph appears in the preliminary, unedited transcript of proceedings for the February 7, 2019 House
10 of Representatives, Subcommittee on Oversight and Investigations, Committee on Energy and
11 Commerce. Defendant lacks information sufficient to form a belief as to the accuracy of the information
12 contained within the quote. Defendant admits that Commander White testified before Congress that he
13 raised concerns regarding the possibility of separating children from their parents in early 2017 to senior
14 ORR leadership.

15 38. Defendant denies that it had a "Family Separation Policy." Paragraph 38 contains a
16 citation to congressional hearing transcript, to which no response is required. To the extent a response is
17 required, Defendant admits that the quotation referenced in this paragraph appears in the cited
18 preliminary, unedited transcript of Congressional testimony of Dr. Julie Linton, a practicing pediatrician
19 in Greenville, South Carolina and Co-Chair of the American Academy of Pediatrics Immigrant Health
20 Special Interest Group, on February 7, 2019 before the House of Representatives, Subcommittee on
21 Oversight and Investigations, Committee on Energy and Commerce. Defendant lacks information
22 sufficient to form a belief as to the accuracy of the quotation or the information referenced therein.

23 39. Defendant denies the allegation that there was a Family Separation pilot program.
24 Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol El Paso sector
25 that resulted in the separations of some family units. Defendant lacks information sufficient to form a
26 belief as to the subjective knowledge of unidentified high-ranking DOJ officials and as to the subjective
27 suffering of migrants that were separated. Defendant denies the specific allegation that the emotional
28

1 pain and suffering of migrants is what motivated the 2017 Border Patrol prosecution initiative or the
2 2018 DOJ Zero-Tolerance policy.

3 40. Defendant denies the allegation that there was a Family Separation pilot program or
4 policy. Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol El
5 Paso sector that terminated in November 2017 and resulted in the separations of some family units.
6 Defendant admits that, for a limited period of time in April, May and June 2018, the United States
7 implemented a separate DOJ Zero-Tolerance policy that resulted in the separation of some families at
8 the United States–Mexico border. Defendant denies the remaining allegations.

9 41. Paragraph 41 cites a media article, to which no response is required. To the extent a
10 response is deemed necessary, Defendant responds that citations in question speak for themselves, are
11 best evidence of their contents, and should be read in full context. Defendant lacks information
12 sufficient to form a belief to the accuracy of the article or as to these allegations, and on that basis denies
13 them.

14 42. Paragraph 42 cites an online article, to which no response is required. To the extent a
15 response is deemed necessary, Defendant responds that citations in question speak for themselves, are
16 best evidence of their contents, and should be read in full context. Defendant admits that the undated
17 American Oversight online news article referenced in this paragraph reports that on December 11, 2017
18 ICE Chief of Staff Thomas Blank wrote that he had been asked to take the lead on drafting a decision
19 memo “‘on separating Family Units and on vetting sponsors’ for minors in the Unaccompanied Alien
20 Children (UAC) program.” Defendant lacks information sufficient to form a belief as to the accuracy of
21 this information or the purported writing from Thomas Blank on or around this date, and on that basis
22 denies these allegations.

23 43. Paragraph 43 cites an online article, to which no response is required. To the extent a
24 response is deemed necessary, Defendant responds that citations in question speak for themselves, are
25 best evidence of their contents, and should be read in full context. Defendant admits that the online news
26 article referenced in this paragraph states that “‘Press reports later indicate that a draft policy memo dated
27 Dec. 16, 2017, titled ‘Policy Options to Respond to Border Surge of Illegal Immigration,’ is ‘circulated
28 between high level officials at DHS and the Justice Department.’” Defendant lacks information

1 sufficient to form a belief as to the accuracy of this quotation. Defendant further admits that the
2 quotations in this paragraph are contained in the purported policy memo cited in this paragraph.
3 Defendant lacks information sufficient to form a belief as to the authenticity of this redlined policy
4 memo, and on that basis denies these allegations.

5 44. Defendant denies the allegation that there was a Family Separation pilot program or
6 policy. Defendant admits that in 2017 there was a prosecution initiative in the U.S. Border Patrol El
7 Paso sector that resulted in the separations of some family units. Defendant lacks information sufficient
8 to form a belief as to the subjective suffering of migrants separated during the 2017 prosecution
9 initiative. Defendant admits that on April 6, 2018, the Attorney General issued a memorandum for
10 federal prosecutors along the Southwest border regarding “zero-tolerance” for offenses under 8 U.S.C.
11 § 1325(a). The DOJ Zero-Tolerance memorandum speaks for itself in terms of the provisions it outlines
12 for the underlying DOJ Zero-Tolerance policy. Plaintiffs’ characterizations of the DOJ Zero-Tolerance
13 policy laid out in this memorandum are not statements of facts for which a response is required.

14 45. Plaintiffs’ characterizations of the Zero-Tolerance policy laid out in the DOJ’s April 6,
15 2018 Zero-Tolerance memorandum are not statements of facts for which a response is required. The
16 DOJ Zero-Tolerance memorandum speaks for itself in terms of the provisions it outlines for the
17 underlying DOJ Zero-Tolerance policy. To the extent a further response is required, Defendant denies
18 this allegation.

19 46. Paragraph 46 contains a quotation from the 93-page DOJ OIG Report, to which no
20 response is required. To the extent a response is deemed required, Defendant lacks information
21 sufficient to form a belief as to the accuracy of the quotation, and on that basis denies these allegations.
22 Plaintiffs’ characterizations of this purported quotation are not statements of facts but conclusions of law
23 for which no response is required.

24 47. Paragraph 47 contains a quotation from the 93-page DOJ OIG Report, to which no
25 response is required. To the extent a response is deemed required, Defendant lacks information
26 sufficient to form a belief as to the accuracy of the quotation, and on that basis denies these allegations.

27 48. Paragraph 48 contains a partial quotation from a news article purporting to transcribe a
28 colloquy between Attorney General Sessions and a Fox News host, Laura Ingraham, to which no

1 response is required. To the extent a response is deemed required, Defendant admits that the complete
2 colloquy referenced in the news article is: “‘Fundamentally, we are enforcing the law,’ Sessions replied.
3 ‘If you break into the country ...’ ‘But is it a deterrent, sir?’ Ingraham interjected. ‘Are you considering
4 it a deterrent?’ ‘I see that the fact that no one was being prosecuted for this was a factor in a fivefold
5 increase in four years in this kind of illegal immigration,’ Sessions said. ‘So, yes, hopefully people will
6 get the message and come through the border at the port of entry and not break across the border
7 unlawfully.’” Defendant lacks information sufficient to form a belief as to the accuracy of the quotations
8 or of the colloquy between Sessions and the Fox News host. To the extent a further response is required,
9 Defendant denies this allegation.

10 49. Paragraph 49 contains a quotation from a transcript of a May 11, 2018 interview of John
11 Kelly by NPR correspondent John Burnett, to which no response is required. To the extent a response is
12 deemed required, Defendant lacks information sufficient to form a belief as to the accuracy of the
13 quotation or of the colloquy between Kelly and Burnett, and on that basis denies these allegations.

14 50. Paragraph 50 contains a quotation from a news article purporting to transcribe a
15 conference call between reporters and HHS’s Acting Assistant Secretary, Steven Wagner, to which no
16 response is required. To the extent a response is deemed required, Defendant lacks information
17 sufficient to form a belief as to the accuracy of the quotation or to the content of the conference call
18 involving Assistant Secretary Wagner and reporters, and on that basis denies these allegations.

19 51. Defendant denies the allegations in paragraph 51.

20 52. Defendant denies that it had a “Family Separation Policy.” Defendant admits that, for a
21 limited period of time from April to June 2018, the United States implemented a DOJ-initiated Zero-
22 Tolerance policy that resulted in the separation of some families at the United States–Mexico border.
23 Defendant further admits that Plaintiff families were separated. Defendant denies the allegation that the
24 Zero-Tolerance policy was a pretext to justify separation of a child from the child’s parent. Defendant
25 denies that Plaintiff Parents were not prosecuted or referred for prosecution. Paragraph 52 contains a
26 citation to the Nov. 25, 2019 DHS OIG Report, to which no response is required. To the extent a
27 response is deemed required, Defendant lacks information sufficient to form a belief as to the accuracy
28 of this quotation or the remaining allegations, and on that basis denies them.

53. Paragraph 53 contains a quotation from Secretary of Homeland Security Kirstjen Nielsen from her remarks at a June 18, 2018 White House Press Briefing on the illegal immigration crisis at the southern border, to which no response is required. To the extent a response is deemed required, Defendant lacks information sufficient to form a belief as to the accuracy of the information contained therein. Defendant denies the accuracy of the partial quotation from Attorney General Sessions referenced in this paragraph. The correct quotation that is contained in Sessions' interview with Fox News host Laura Ingraham on The Ingraham Angle on June 19, 2018 is: "We want to end this process of children being brought across dangerous territory, placing those children at risk. If they want to claim asylum, let them go through the port of entry. That's the way it should be done." Defendant lacks information sufficient to form a belief as to the remaining allegations, and on that basis denies them.

54. Paragraph 54 contains information from the May 29, 2020 DHS OIG Report, to which no response is required. To the extent a response is deemed required, Defendant lacks information sufficient to form a belief as to the accuracy of this information.

55. Defendant lacks information sufficient to form a belief as to these allegations, and on that basis denies them.

56. Defendant denies that it had a "Family Separation" pilot program or policy. Defendant admits it had a DOJ-initiated Zero-Tolerance policy, but denies the purpose(s) were as alleged in this paragraph. Defendant lacks information sufficient to form a belief as to the remaining allegations, and on that basis denies them.

57. Defendant denies that it had a "Family Separation Policy." Defendant admits that there was litigation by the federal court in *Ms. L.* concerning the Zero-Tolerance policy and that on June 6, 2018 the federal court in that case granted Defendants' motion to dismiss Plaintiffs' claims under the APA and the Asylum Statute, and denied Defendants' motion to dismiss Plaintiffs' due process claim. To the extent paragraph 57 quotes the June 6, 2018 *Ms. L.* decision, that decision speaks for itself.

58. Defendant denies that it had a "Family Separation Policy." Defendant admits that President Trump issued an Executive Order on June 20, 2018, entitled "Affording Congress an Opportunity to Address Family Separation." Paragraph 58 contains a quotation from Section 3 of aforementioned Executive Order, to which no response is required. Paragraph 58 also contains quotes

1 attributed to President Trump from (1) an April 28, 2019 *Washington Post* news article purporting to
2 transcribe a colloquy between Trump and a Fox News host, Maria Bartiromo, and (2) an October 23,
3 2018 Reuters online article purporting to describe comments made by President Trump to reporters at
4 the White House, to which no response is required. To the extent any response is deemed required,
5 Defendant lacks information sufficient to form a belief as to the accuracy of these quotes or of the
6 colloquy between Trump and the Fox News host, or Trump and the White House reporters. Plaintiffs'
7 characterizations of these purported quotes are not statements of facts for which a response is required.

8 59. Defendant denies that it had a "Family Separation Policy." Defendant admits that on June
9 26, 2018, the federal court in *Ms. L.* granted the Plaintiffs' motion for a class-wide preliminary
10 injunction. Defendant admits that the *Ms. L.* court held: "This Order does not implicate the
11 Government's discretionary authority to enforce immigration or other criminal laws, including its
12 decisions to release or detain class members. Rather, the Order addresses only the circumstances under
13 which the Government may separate class members from their children, as well as the reunification of
14 class members who are returned to immigration custody upon completion of any criminal proceedings."
15 To the extent this paragraph quotes from the *Ms. L.* decisions, those decisions speak for themselves.
16 Plaintiffs' characterizations thereof are not statements of facts for which a response is required.

17 60. Defendant denies that it had a "Family Separation Policy." Defendant admits that, for a
18 limited period of time in from April to June 2018, the United States implemented a DOJ-initiated Zero-
19 Tolerance policy that resulted in the separation of some families at the United States–Mexico border.
20 Defendant further admits that Plaintiff families were separated. Paragraph 60 contains citations to
21 statistics from a Status Report, to which no response is necessary. Defendant denies that the goal of the
22 Zero-Tolerance policy was to separate families. Defendant lacks information sufficient to form a belief
23 as to the remaining allegations, and on that basis denies them.

24 61. Defendant denies that it had a "Family Separation Policy." Paragraph 61 contains a
25 quotation cited in the *Ms. L.* opinion, to which no response is required. Insofar as the quotation is
26 intended to be an allegation, Defendant lacks information sufficient to form a belief. Defendant lacks
27 information sufficient to form a belief as to the remaining allegations, and on that basis denies them.

62. Defendant denies that it had a “Family Separation Policy” or pilot program. Paragraph 62 contains a partial quotation from the February 2020 Physicians for Human Rights document cited, to which no response is required. Plaintiffs’ characterizations of these quotes are not statements of facts for which a response is required. To the extent any response is deemed necessary, Defendant lacks information sufficient to form a belief as to the information contained in these partial quotes.

63. Defendant denies that it had a “Family Separation Policy.” Paragraph 63 contains a quotation from the cited judicial opinion attributed to an Assistant Professor of psychology at Yale University, to which no response is required. Paragraph 63 also contains a quotation from the April 2022 Physicians for Human Rights document cited, to which no response is required. Plaintiffs’ characterizations of these quotes are not statements of facts for which a response is required. To the extent any response is deemed necessary, Defendant lacks information sufficient to form a belief as to the allegations.

64. Paragraph 64 contains a quotation that appears in the Congressional testimony of Dr. Julie Linton, a practicing pediatrician in Greenville, South Carolina and Co-Chair of the American Academy of Pediatrics Immigrant Health Special Interest Group, on February 7, 2019 before the House of Representatives, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, to which no response is required. Plaintiffs’ characterizations of these quotes are not statements of facts for which a response is required. To the extent any response is deemed necessary, Defendant lacks information sufficient to form a belief as to the accuracy of the quotation or the information referenced therein.

65. The first sentence of Paragraph 65 contains a quotation from an Amnesty International report attributed to the American Academy of Pediatrics, to which no response is required. To the extent any response is deemed necessary, Defendant lacks information sufficient to form a belief as to the accuracy of the quotation or the information referenced therein. Paragraph 65 also contains a quotation from an unedited transcript of proceedings for the February 7, 2019 House of Representatives, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce attributed to Commander White, to which no response is required. To the extent a response is deemed required, Defendant lacks information sufficient to form a belief as to the accuracy of the quotation or the

1 information referenced therein. The judicial opinion cited in this paragraph speaks for itself. Plaintiffs’
2 characterization thereof is not a statement of fact for which a response is required. The last sentence of
3 paragraph 65 is a statement that appears in the preliminary, unedited transcript of Congressional
4 testimony of Jack Shonkoff, a Professor of Child Health and Development at the Harvard Chan School
5 of Public Health and the Graduate School of Education, on February 7, 2019 before the House of
6 Representatives, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce,
7 to which no response is required. To the extent any response is deemed necessary, Defendant lacks
8 information sufficient to form a belief as to the accuracy of the quotation or the information referenced
9 therein.

10 66. Defendant denies the allegation that there was a Family Separation policy. This
11 paragraph contains Plaintiffs’ characterization of this civil action, to which no response is required. To
12 the extent a response is required, Defendant admits there was a DOJ-initiated Zero-Tolerance Policy.
13 Defendant admits that all three families in this case were separated in order to pursue prosecutions when
14 the Plaintiff parent was deemed amenable for prosecution for illegal entry in violation of 8 U.S.C. §
15 1325, due to their entry into the United States without permission by crossing from Mexico into the
16 United States at or near San Luis, Arizona in May and early June 2018. Defendant further admits that
17 the Plaintiff parents were detained in government and government-contracted facilities while the
18 Plaintiff minors were referred to ORR as UCs and placed with ORR-funded care providers. Defendant
19 denies that there was a “total lack of information” about any of the processes to which they were
20 subjected. Defendant further denies that all but one Plaintiff spoke little or no Spanish. Defendant lacks
21 information sufficient to form a belief as to the remaining allegations, and on that basis denies them.

22 67. Defendant admits that Eduardo I.T. and Edwin are from Guatemala and that Edwin was
23 16-years old in 2018. Defendant lacks information sufficient to form a belief as to the truth of the
24 remaining allegations, and on that basis denies them.

25 68. Defendant admits that Eduardo I.T. and Edwin entered the United States between the
26 ports of entry at or near San Luis, Arizona on or about May 9, 2018. Defendant further admits that
27 Eduardo I.T. and Edwin were taken into custody by U.S. Border Patrol agents and transported to the
28 Yuma, Arizona Border Patrol Station. To the extent the reference to the Spanish word “*hieleras*” is

1 intended to be an allegation that the temperature of CBP facilities were impermissibly cold, Defendant
2 denies this allegation. Defendant lacks sufficient information to form a belief as to the truth of the
3 remaining allegations of the paragraph, and on that basis denies them.

4 69. To the extent the reference to the Spanish word “*hieleras*” is intended to be an allegation
5 that the temperature of CBP facilities were impermissibly cold, Defendant denies this allegation.
6 Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations, and
7 on that basis denies them.

8 70. Defendant admits that CBP separated Eduardo I.T. and Edwin. Defendant lacks
9 information sufficient to form a belief as to the truth of the remaining allegations, and on that basis
10 denies them.

11 71. Defendant denies that the time between approximately May 9, 2018 to August 1, 2018 is
12 “nearly 15 weeks.” Defendant lacks sufficient information to form a belief as to the truth of the
13 remaining allegations, and on that basis denies them.

14 72. Defendant denies Eduardo I.T.’s allegations regarding conditions in the Border Patrol
15 station. Defendant lacks sufficient information to form a belief as to the truth of the remaining
16 allegations, and on that basis denies them.

17 73. To the extent the reference to the Spanish word “*hieleras*” is intended to be an allegation
18 that the temperature of CBP facilities were impermissibly cold, Defendant denies this allegation.
19 Defendant further denies Eduardo I.T.’s allegation that he was not provided with potable water.
20 Defendant admits that the bathroom in the group holding cells did not have a shower or tub. Defendant
21 lacks sufficient information to form a belief as to the truth of the remaining allegations, and on that basis
22 denies them.

23 74. To the extent the reference to the Spanish word “*hieleras*” is intended to be an allegation
24 that the temperature of CBP facilities were impermissibly cold, Defendant denies this allegation.
25 Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations, and
26 on that basis denies them.

27 75. To the extent the reference to the Spanish word “*hieleras*” is intended to be an allegation
28 that the temperature of CBP facilities were impermissibly cold, Defendant denies this allegation.

1 Defendant denies the allegations that the cell in which Edwin was detained lacked a sink and access to
2 drinking water. Defendant lacks sufficient information to form a belief as to the truth of the remaining
3 allegations, and on that basis denies them.

4 76. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
5 and on that basis denies them.

6 77. Defendant admits that approximately two days after Edwin was apprehended by Border
7 Patrol agents, he was transferred to San Antonio, Texas. Defendant lacks sufficient information to form
8 a belief as to the truth of the remaining allegations, and on that basis denies them.

9 78. Defendant lacks sufficient information to form a belief as to the truth of the allegations in
10 this paragraph, and on that basis denies them.

11 79. Defendant admits that Edwin's UC Case File reflects that Edwin arrived at St. PJ's
12 Children's Home, a state-licensed, ORR-funded care provider, in San Antonio, Texas, on May 13, 2018
13 at 5:45 p.m. and his Initial Intakes Assessment took place on May 14, 2018 at 9:35 a.m. The Initial
14 Intakes Assessment indicates that Edwin requested "a phone call." Defendant lacks sufficient
15 information to form a belief as to the truth of the remaining allegations, and on that basis denies them.

16 80. Defendant admits that Edwin's UC Case File reflects that it was documented in his Initial
17 Intakes Assessment that Edwin had a cough, runny nose and body aches and reported a fever the day
18 before. The case file reflects that he underwent a medical evaluation on May 14, 2018, presenting with
19 1-day history of frequent, non-productive cough, headache, chills, sore throat, nasal congestion and
20 rhinorrhea and was diagnosed with a respiratory infection and prescribed over the counter Dayquil as
21 needed for no more than three days. It was also noted in Edwin's UC Case file that he had been exposed
22 to Varicella on May 10, 2018 but did not contract the chicken pox and was cleared. Edwin's UC Case
23 File reflects that on May 25, 2018, Edwin presented for medical evaluation with complaints of a rash
24 and was diagnosed with scabies for which he was prescribed Permethrin ointment and Benadryl.
25 Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations, and
26 on that basis denies them.

27 81. Defendant admits that Edwin's UC Case File reflects that on May 25, 2018, Edwin
28 presented for medical evaluation with complaints of a rash and was diagnosed with scabies for which he

1 was prescribed Permethrin ointment and Benadryl. Defendant lacks sufficient information to form a
2 belief as to the truth of the remaining allegations, and on that basis denies them.

3 82. Defendant admits that Edwin's UC Case File reflects that in his Daily Progress Notes that
4 he was regularly reported as doing well during the day with a cooperative and positive disposition and
5 was sleeping well at night. Edwin's UC Case File reflects that on June 15, 2018, Edwin's case manager
6 noted that he was feeling unwell in his placement that day due to worries and concerns about his father's
7 wellbeing and was disappointed that neither his aunt nor cousin was offering to sponsor him, which was
8 causing him to be upset and lose his appetite. Defendant lacks sufficient information to form a belief as
9 to the truth of the remaining allegations, and on that basis denies them.

10 83. Defendant admits that Eduardo I.T. was detained for one week at the Yuma Border Patrol
11 Station before being transferred to the Wellton Border Patrol Station, both located in the Yuma Sector in
12 Arizona. Defendant lacks sufficient information to form a belief as to the truth of the remaining
13 allegations, and on that basis denies them.

14 84. Defendant denies that Eduardo I.T. was transferred to or detained in San Diego.
15 To the extent the reference to the Spanish word "*hieleras*" is intended to be an allegation that the
16 temperature of CBP facilities were impermissibly cold, Defendant denies this allegation. Defendant
17 lacks sufficient information to form a belief as to the truth of the remaining allegations, and on that basis
18 denies them.

19 85. Defendant denies that Eduardo I.T. was transferred to or detained in San Diego.
20 Defendant denies that Eduardo I.T. was not given the opportunity to bathe and that the facility was
21 impermissibly cold. Defendant lacks sufficient information to form a belief as to the truth of the
22 remaining allegations, and on that basis denies them.

23 86. Defendant denies that Eduardo I.T. was transferred to or detained in San Diego.
24 Defendant further denies Eduardo I.T.'s allegation that he was not provided with clean water. Defendant
25 denies that Eduardo I.T. was not given the opportunity to bathe. Defendant lacks sufficient information
26 to form a belief as to the truth of the remaining allegations, and on that basis denies them.

27 87. Defendant denies that Eduardo I.T. was transferred to or detained in San Diego.
28 Defendant admits that Eduardo I.T. was transferred back to the Yuma Border Patrol Station for one day

1 and then transferred into ICE custody. Defendant denies that Eduardo I.T. was not given the opportunity
2 to bathe. Defendant lacks sufficient information to form a belief as to the truth of the remaining
3 allegations, and on that basis denies them.

4 88. Defendant lacks sufficient information to form a belief as to the truth of the allegations in
5 this paragraph, and on that basis denies them

6 89. Defendant admits that Eduardo I.T. was transferred to ICE custody, first to the Florence
7 staging facility in Florence, Arizona on May 22, 2018, and then to the Florence Service Processing
8 Center on May 24, 2018. Defendant admits that Eduardo I.T. was permitted to wash himself and
9 received fresh clothes when he came into ICE's custody. Defendant lacks information sufficient to form
10 a belief as to the remaining allegations, and on that basis denies them.

11 90. Defendant admits that while he was in ICE custody in Florence, Arizona, Eduardo I.T.
12 inquired about his son, Edwin, and expressed interest in being reunified with Edwin. Defendant admits
13 that Eduardo I.T. was transferred to the Eloy Detention Center on June 20, 2018. Defendant lacks
14 information sufficient to form a belief as to the remaining allegations, and on that basis denies them.

15 91. Defendant admits that during his time in ICE custody, immigration officials spoke to
16 Eduardo I.T. in Spanish. Defendant further admits that at least one Government document states that
17 Eduardo I.T. was a monolingual Spanish-speaker and could read and write in that language. Defendant
18 lacks information sufficient to form a belief as to the remaining allegations, and on that basis denies
19 them.

20 92. Defendant admits that after Eduardo I.T. was transferred to the Eloy Federal Contract
21 Facility, he was able to speak with his son Edwin on the phone. Edwin's UC Case File reflects that on
22 June 19, 2018 at 12:00 pm Edwin spoke with his father by phone for fifteen minutes. Defendant lacks
23 information sufficient to form a belief as to the remaining allegations, and on that basis denies them.

24 93. Defendant admits that on June 19, 2018, Eduardo I.T. and Edwin spoke by telephone to
25 each other from approximately 12:00 pm to 12:15 p.m. while Eduardo I.T. was in custody at the Eloy
26 Federal Contract Facility and Edwin was placed at St. PJ's Children's Home. Defendant lacks
27 information sufficient to form a belief as to the remaining allegations, and on that basis denies them.

28 94. Defendant admits that Edwin's UC Case File reflects that, after the June 19, 2018 call,

1 Edwin had phone calls or video chats with Eduardo I.T. on the following dates: June 28, 2018 from
2 11:00 a.m. to 11:10 a.m.; July 5, 2018 from 11:25 a.m. to 11:45 a.m.; July 10, 2018 (video chat) from
3 1:30 p.m. to 2:00 p.m.; and July 19, 2018 from 11:20 a.m. to 11:41 a.m. Defendant lacks information
4 sufficient to form a belief as to the remaining allegations, and on that basis denies them.

5 95. Defendant admits that Edwin's UC Case File reflects that he was referred to RAICES for
6 legal representation and had several questions for the case manager concerning long term foster care.
7 The case manager met with Edwin and addressed his questions. Defendant avers that it was noted that
8 Edwin was grateful that he might be able to remain in the United States with legal relief and planned to
9 inform his father on their next call. Defendant lacks information sufficient to form a belief as to the
10 remaining allegations, and on that basis denies them.

11 96. Defendant denies that it had a "Family Separation Policy." Defendant admits that on June
12 26, 2018, the federal court in *Ms. L.* granted the Plaintiffs' motion for a class-wide preliminary
13 injunction. Defendant admits that the *Ms. L.* court held: "This Order does not implicate the
14 Government's discretionary authority to enforce immigration or other criminal laws, including its
15 decisions to release or detain class members. Rather, the Order addresses only the circumstances under
16 which the Government may separate class members from their children, as well as the reunification of
17 class members who are returned to immigration custody upon completion of any criminal proceedings."
18 The *Ms. L.* decision speaks for itself. Plaintiffs' allegations characterizing the *Ms. L.* decision are not
19 statements of fact for which a response is required. To the extent a response is required, Defendant
20 denies Plaintiffs' allegations characterizing the *Ms. L.* decision. Defendant admits that Edwin was
21 discharged from St. PJ's Children's Home on approximately July 23, 2018 to Southwest Key Programs
22 transportation services for transfer from St. PJ's Children's Home, in San Antonio, TX to BCFS
23 Tornillo, in Tornillo, TX, to be reunified with Eduardo I.T. Defendant lacks information sufficient to
24 form a belief as to the remaining allegations in this paragraph, and on that basis denies them.

25 97. Defendant lacks sufficient knowledge or information to form a belief as to the truth of
26 these allegations and on that basis denies them.

27 98. Defendant admits that on July 26, 2018, Eduardo I.T. was transferred to Karnes County
28 Immigration Processing Center. Defendant further admits that on August 1, 2018, Eduardo was reunited

1 with Edwin at Karnes County Immigration Processing Center. Defendant lacks information sufficient to
2 form a belief as to the remaining allegations, and on that basis denies them.

3 99. Defendant admits that on July 26, 2018, Eduardo I.T. and Edwin were transferred to
4 Karnes County Residential Center. Defendant further admits that Eduardo I.T. had a credible fear
5 interview conducted by an asylum officer from U.S. Citizenship and Immigration Services on August 9,
6 2018. Defendant denies that Eduardo I.T. had multiple credible fear interviews between August 8, 2018
7 and August 14, 2018. Defendant admits that a Q'eqchi' interpreter was provided for the credible fear
8 interview. Defendant lacks sufficient information to admit or deny the allegation that Eduardo I.T. did
9 not understand the interpreter provided during the credible fear interview. Defendant admits that
10 Eduardo I.T. was provided forms to sign after the interview, including a form declining Immigration
11 Judge review of the credible fear determination. Defendant lacks sufficient information to affirm or deny
12 the allegation that Eduardo I.T. did not understand the contents of the forms. Defendant denies that
13 Eduardo I.T. was "cajoled" into signing any forms.

14 100. Defendant admits that on August 18, 2018, Eduardo I.T. and Edwin were released from
15 custody. Defendant lacks information sufficient to form a belief as to the remaining allegations, and on
16 that basis denies them.

17 101. Defendant admits that government records do not indicate as of the date of this filing that
18 either Eduardo I.T. or Edwin were ever charged with or convicted of a crime in the United States.

19 102. Defendant admits that ICE was aware of Eduardo I.T.'s negative credible fear finding.
20 Defendant denies Plaintiff's characterization that ICE officials intimidated and threatened him. The
21 cases cited therein speak for themselves. Defendant denies that Eduardo I.T.'s asylum application
22 remains pending. Defendant lacks information sufficient to form a belief as to the remaining allegations,
23 and on that basis denies them.

24 103. Defendant lacks information sufficient to form a belief as to these allegations, and on that
25 basis denies them.

26 104. Defendant lacks information sufficient to form a belief as to these allegations, and on that
27 basis denies them.

28 105. Defendant admits that Ignacio P.G. and Leonel Y.P.G. are from Guatemala and that

1 Leonel was six years old when they entered the United States without permission. Defendant lacks
2 information sufficient to form a belief as to the truth of the remaining allegations, and on that basis
3 denies them.

4 106. Defendant admits that Ignacio P.G. and Leonel entered the United States between ports
5 of entry at or near San Luis, Arizona, but denies that Ignacio P.G. and Leonel entered the United States
6 on the morning of May 18, 2018. Defendant admits that Ignacio P.G. and Leonel were encountered by
7 U.S. Border Patrol agents. Defendant denies that Border Patrol agents made Ignacio P.G. sign
8 documents. Defendant lacks sufficient information to form a belief as to the truth of the remaining
9 allegations of the paragraph, and on that basis denies them.

10 107. Defendant admits that Ignacio P.G. and Leonel were driven to Border Patrol's Yuma
11 Station in Arizona. Defendant lacks information sufficient to form a belief as to the remainder of the
12 allegations in this paragraph, and on that basis denies them.

13 108. To the extent the reference to the Spanish word "*hieleras*" is intended to be an allegation
14 that the temperature of CBP facilities were impermissibly cold, Defendant denies this allegation.
15 Defendant admits that Border Patrol agents photographed Ignacio P.G. and Leonel, and that Ignacio
16 P.G. was given papers to sign. Defendant lacks information sufficient to form a belief as to the
17 remaining allegations, and on that basis denies them.

18 109. Defendant admits that CBP separated Ignacio P.G. and Leonel. Defendant lacks
19 information sufficient to form a belief as to the truth of the remaining allegations, and on that basis
20 denies them.

21 110. Defendant admits that Ignacio P.G. spoke on behalf of Leonel to U.S. Border Patrol
22 agents and stated that Leonel spoke the Mam language. Defendant denies that the conditions of Ignacio
23 P.G. and Leonel's confinement were "abysmal." Defendant lacks information sufficient to form a belief
24 as to the truth of that statement or the remaining allegations, and on that basis denies them.

25 111. Defendant admits that Ignacio P.G. told Border Patrol agents that Leonel only spoke
26 Mam. Defendant lacks information sufficient to form a belief as to the truth of the remaining allegations,
27 and on that basis denies them.

28 112. Defendant admits that CBP separated Ignacio P.G. and Leonel. Defendant lacks

1 information sufficient to form a belief as to the truth of the remaining allegations, and on that basis
2 denies them.

3 113. To the extent the reference to the Spanish word “*hieleras*” is intended to be an allegation
4 that the temperature of CBP facilities were impermissibly cold, Defendant denies this allegation.
5 Defendant further denies that Ignacio P.G. was held at Yuma for a week after his apprehension before
6 being transferred. Defendant lacks information sufficient to form a belief as to the truth of the remaining
7 allegations, and on that basis denies them.

8 114. To the extent the reference to the Spanish word “*hieleras*” is intended to be an allegation
9 that the temperature of CBP facilities were impermissibly cold, Defendant denies this allegation.
10 Defendant further denies that Ignacio P.G. was not provided with potable water. Defendant lacks
11 information sufficient to form a belief as to the truth of the remaining allegations, and on that basis
12 denies them.

13 115. Defendant lacks information sufficient to form a belief as to these allegations, and on that
14 basis denies them.

15 116. Defendant admits that Border Patrol transferred Ignacio P.G. to ICE in Yuma, Arizona.
16 Defendant lacks information sufficient to form a belief as to the remaining allegations, and on that basis
17 denies them.

18 117. Defendant admits that Ignacio P.G. was taken into ICE custody at the Otero County
19 Processing Center on June 3, 2018. Defendant further admits that Otero County Processing Center was
20 an ICE contractor facility at this time. Defendant denies that facility staff at Otero did not clean the
21 bathrooms and forced those in custody to clean the bathrooms themselves. Defendant further denies that
22 Ignacio P.G. did not receive enough to eat during his time in detention. Defendant lacks information
23 sufficient to form a belief as to the remaining allegations, and on that basis denies them.

24 118. Defendant admits that Ignacio P.G. was in ICE custody from approximately June 2, 2018
25 to July 19, 2018. Defendant denies the characterization that ICE officials were not available for
26 questions regarding Ignacio P.G.’s son Leonel, and that ICE officials did not give basic information to
27 those within its custody. Defendant avers that Ignacio P.G. was able to request communication with
28 Leonel and was able to call Leonel while he was in ICE custody. Defendant lacks information sufficient

1 to form a belief as to the remaining allegations, and on that basis denies them.

2 119. Defendant admits that Leonel's UC Case File reflects that Ignacio and Leonel spoke by
3 telephone on June 30, 2018. Defendant lacks information sufficient to form a belief as to the remaining
4 allegations, and on that basis denies them.

5 120. Defendant admits that Leonel's UC Case File reflects that Ignacio and Leonel spoke by
6 telephone weekly. Defendant lacks information sufficient to form a belief as to the remaining
7 allegations, and on that basis denies them.

8 121. Defendant admits that Leonel's UC Case File reflects that Leonel was in ORR custody
9 and placed at BCFS Health and Human Services – Harlingen f/k/a Baptist Christian and Family Services
10 (BCFS), a state-licensed, ORR-funded care provider, in Harlingen, Texas, from approximately May 29,
11 2018 to July 19, 2018. Leonel's UC Case File reflects that Mam interpreter services were made available
12 to Leonel. Leonel's Case File reflects that Leonel was a calm and happy child, who enjoyed drawing,
13 playing with cars and other children, and did not have any concerns with eating, sleeping or nightmares.
14 To the extent the reference to the Spanish word "*hieleras*" is intended to be an allegation that the
15 temperature of CBP facilities were impermissibly cold, Defendant denies this allegation. Defendant
16 lacks information sufficient to form a belief as to the remaining allegations, and on that basis denies
17 them.

18 122. Defendant admits that on July 19, 2018, Ignacio P.G. was released from ICE custody and
19 was reunited with Leonel. Defendant lacks information sufficient to form a belief as to the remaining
20 allegations, and on that basis denies them.

21 123. Defendant admits that Leonel was never charged with a crime, but denies the allegation
22 that Ignacio P.G. was never charged with a crime. Defendant avers that, on or about May 29, 2018,
23 Ignacio P.G. was charged with illegal entry in violation of 8 U.S.C. § 1325(a)(1), pled guilty to the same
24 on or about June 1, 2018, and was sentenced to time served.

25 124. To the extent the reference to the Spanish word "*hieleras*" is intended to be an allegation
26 that the temperature of CBP facilities were impermissibly cold, Defendant denies this allegation.
27 Defendant lacks information sufficient to form a belief as to these allegations, and on that basis denies
28 them.

1 125. Defendant denies that Leonel was in “detention” while placed at BCFS. Defendant lacks
2 information sufficient to form a belief as to the remaining allegations, and on that basis denies them.

3 126. Defendant admits that Benjamin J.R. and William A.J.M. are from Guatemala and that
4 William was 15-years old in 2018. Defendant avers that Benjamin J.R. told the U.S. Border Patrol that
5 he speaks Spanish and does not speak any other dialects. Defendant avers that William told U.S. Border
6 Patrol that Spanish was his native language. Defendant lacks information sufficient to form a belief as to
7 the truth of the remaining allegations, and on that basis denies them.

8 127. Defendant admits that Benjamin J.R. and William were encountered by Border Patrol
9 agents between ports of entry at or near San Luis, Arizona on or about June 2, 2018. Defendant lacks
10 sufficient information to form a belief as to the truth of the remaining allegations of the paragraph, and
11 on that basis denies them.

12 128. Defendant admits that Border Patrol brought Benjamin J.R. and William to the Yuma
13 Border Patrol Station for processing. To the extent the reference to the Spanish word “*hieleras*” is
14 intended to be an allegation that the temperature of CBP facilities were impermissibly cold, Defendant
15 denies this allegation. Defendant lacks sufficient information to form a belief as to the truth of the
16 remaining allegations of the paragraph, and on that basis denies them.

17 129. Defendant denies Benjamin J.R. and William Border’s allegations that Patrol agents did
18 not offer them food or water. Defendant lacks information sufficient to form a belief as to the remaining
19 allegations, and on that basis denies them.

20 130. Defendant lacks information sufficient to form a belief as to these allegations, and on that
21 basis denies them.

22 131. Defendant lacks information sufficient to form a belief as to these allegations, and on that
23 basis denies them.

24 132. Defendant admits that Benjamin J.R. told U.S. Border Patrol that he speaks Spanish and
25 does not speak any other dialect. Defendant further admits that that William told U.S. Border Patrol
26 agents that his native language is Spanish. Defendant lacks information sufficient to form a belief as to
27 the remaining allegations, and on that basis denies them.

28 133. Defendant admits that CBP separated Benjamin J.R. from William. Defendant lacks

1 information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and
2 on that basis denies them.

3 134. Defendant lacks sufficient information to form a belief as to the truth of the allegations in
4 this paragraph, and on that basis denies them.

5 135. Defendant lacks information sufficient to form a belief as to these allegations, and on that
6 basis denies them.

7 136. Defendant denies that Benjamin J.R. was not given food or water. Defendant denies
8 Benjamin J.R.'s allegations regarding conditions in the Border Patrol station. Defendant lacks
9 information sufficient to form a belief as to the remaining allegations, and on that basis denies them.

10 137. Defendant admits that Benjamin J.R. was detained at Yuma Border Patrol Station for
11 several days. Defendant lacks sufficient information to form a belief as to the truth of the remaining
12 allegations in this paragraph, and on that basis denies them.

13 138. Defendant denies that William was never given anything to drink and only given instant
14 soup noodles to eat. Defendant lacks information sufficient to form a belief as to the remaining
15 allegations in this paragraph, and on that basis denies them.

16 139. Defendant admits that CBP separated Benjamin J.R. from William. Defendant lacks
17 information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and
18 on that basis denies them.

19 140. Defendant admits that Benjamin J.R. told U.S. Border Patrol agents that he speaks
20 Spanish and no other dialect. Defendant lacks sufficient information to form a belief as to the truth of
21 the remaining allegations in this paragraph, and on that basis denies them.

22 141. Defendant denies that Benjamin J.R. was detained for a week at Yuma Border Patrol
23 station after his apprehension. Defendant admits that the bathroom in the group holding cells did not
24 have a shower area. Defendant denies that Benjamin J.R. did not receive any personal hygiene products.
25 Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations in this
26 paragraph, and on that basis denies them.

27 142. Defendant admits that on or about June 6, 2018, Benjamin J.R. was transported to ICE's
28 Florence Staging Facility. Defendant lacks information sufficient to form a belief as to the remaining

1 allegations in this paragraph, and on that basis denies them.

2 143. Defendant lacks information sufficient to form a belief as to these allegations, and on that
3 basis denies them.

4 144. Defendant lacks information sufficient to form a belief as to these allegations, and on that
5 basis denies them.

6 145. Defendant denies Plaintiffs' characterization that ICE officials forced Benjamin J.R. to
7 sign documents. Defendant lacks information sufficient to form a belief as to the remaining allegations
8 and on that basis denies them.

9 146. Defendant admits that Benjamin J.R. was first booked into ICE's Florence Staging
10 Facility on or about June 6, 2018, was then transferred to the Federal Correctional Institution in
11 Victorville on or about June 9, 2018, and was then transferred to the Adelanto ICE Processing Center on
12 or about July 9, 2018, where he remained until he was released on or about March 18, 2019. Defendant
13 lacks information sufficient to form a belief as to the remaining allegations.

14 147. Defendant lacks information sufficient to form a belief as to these allegations, and on that
15 basis denies them.

16 148. Defendant lacks information sufficient to form a belief as to these allegations, and on that
17 basis denies them.

18 149. Defendant admits that on June 26, 2018, Benjamin J.R. was able to call his son William
19 and they were able to speak on the phone for approximately fifteen minutes. Defendant lacks
20 information sufficient to form a belief as to the remaining allegations, and on that basis denies them.

21 150. Defendant admits that William's UC Case File reflects that William was referred to ORR
22 custody on June 3, 2018 and placed at Southwest Key Programs Casa Kokopelli (SWK), a state-
23 licensed, ORR-funded care provider, in Mesa, Arizona, where he was admitted on June 4, 2018. On June
24 26, 2018, Benjamin J.R. was able to call his son William at SWK and they were able to speak on the
25 phone for approximately fifteen minutes. Defendant lacks information sufficient to form a belief as to
26 the remaining allegations, and on that basis denies them.

27 151. Defendant admits that William's UC Case File reflects that while William was placed at
28 SWK, the SWK case manager and officers at the facilities where Benjamin J.R. was being detained

1 regularly scheduled weekly and often bi-weekly phone calls for Benjamin J.R. and William to speak,
2 which lasted between 10 and 20 minutes until William's release to a sponsor on November 2, 2018.
3 Defendant further avers that there were a few times when ICE called the ORR facility to connect with
4 William and there was no answer. Defendant lacks information sufficient to form a belief as to the
5 remaining allegations, and on that basis denies them.

6 152. Defendant admits that Benjamin J.R. was booked into the Adelanto ICE Processing
7 Center on or about July 9, 2018, a contract facility. Defendant denies that the bathrooms were not
8 cleaned at the facility. Defendant further denies that Benjamin J.R. was not given sufficient food or
9 enough time to eat. Defendant lacks information sufficient at this time to form a belief as to whether
10 Benjamin J.R. was placed in a cell with two sets of bunk beds and three other men. Defendant lacks
11 information sufficient to form a belief as to the remaining allegations, and on that basis denies them.

12 153. Defendant lacks information sufficient to form a belief as to these allegations, and on that
13 basis denies them.

14 154. Defendant lacks information sufficient to form a belief as to these allegations, and on that
15 basis denies them.

16 155. Defendant admits that CBP separated Benjamin J.R. from William and referred William
17 to ORR custody on June 3, 2018. Defendant lacks sufficient information to form a belief as to the truth
18 of the remaining allegations, and on that basis denies them.

19 156. Defendant admits that William's UC Case File reflects that William spoke both Spanish
20 and Mam while at SWK. The SWK care providers did not record any problems understanding William,
21 and immediately upon arrival explained to William the reunification and deportation process and the
22 possibility of seeking legal relief. Defendant lacks sufficient information to form a belief as to the truth
23 of the remaining allegations, and on that basis denies them.

24 157. Defendant admits that William's UC Case File reflects that upon William's arrival, the
25 SWK case manager explained to William the reunification and deportation process and the possibility of
26 seeking legal relief. Defendant lacks sufficient information to form a belief as to the truth of the
27 remaining allegations, and on that basis denies them.

28 158. Defendant admits that on June 26, 2018, the federal court in *Ms. L.* granted the Plaintiffs'

1 motion for a class-wide preliminary injunction. Defendant admits that the *Ms. L.* court held: “This Order
2 does not implicate the Government’s discretionary authority to enforce immigration or other criminal
3 laws, including its decisions to release or detain class members. Rather, the Order addresses only the
4 circumstances under which the Government may separate class members from their children, as well as
5 the reunification of class members who are returned to immigration custody upon completion of any
6 criminal proceedings.” The *Ms. L.* decision speaks for itself. Plaintiffs’ allegations characterizing the
7 *Ms. L.* decision are not statements of fact for which a response is required. To the extent a response is
8 required, Defendant denies Plaintiffs’ allegations characterizing the *Ms. L.* decision. Defendant admits
9 on or about July 22, 2018, William was transported with a SWK escort to BCFS in Texas, to be
10 reunified with his father; however, the reunification did not take place and William returned to SWK.
11 Defendant lacks information sufficient to form a belief as to the remaining allegations in this paragraph,
12 and on that basis denies them.

13 159. Defendant admits on or about July 22, 2018, William was transported with a SWK escort
14 to BCFS in Texas, to be reunified with his father; however, the reunification did not take place and
15 William returned to SWK. Defendant lacks information sufficient to form a belief as to the remaining
16 allegations in this paragraph, and on that basis denies them.

17 160. Defendant admits on or about July 22, 2018, William was transported with a SWK escort
18 to BCFS in Texas, to be reunified with his father; however, the reunification did not take place and
19 William returned to SWK. Defendant lacks information sufficient to form a belief as to the remaining
20 allegations in this paragraph, and on that basis denies them.

21 161. Defendant admits on or about July 22, 2018, William was transported with a SWK escort
22 to BCFS in Texas, to be reunified with his father; however, the reunification did not take place and
23 William returned to SWK. Defendant lacks information sufficient to form a belief as to the remaining
24 allegations in this paragraph, and on that basis denies them.

25 162. Defendant admits that Benjamin J.R. was in ICE custody until his release from ICE
26 custody on or about March 18, 2019. Defendant admits that on or about July 22, 2018, William was
27 transported with a SWK escort to BCFS in Texas, to be reunified with his father; however, the
28 reunification did not take place and William returned to SWK. Defendant avers that, on November 2,

1 2018, in accordance with Benjamin J.R.'s wishes, William was released to his family member, as an
2 approved sponsor, in Oakland, California. Defendant lacks information sufficient to form a belief as to
3 the remaining allegations in this paragraph, and on that basis denies them.

4 163. Defendant denies that Benjamin J.R. never received information about where he was,
5 where his son was, or what the process was for pursuing asylum or release from detention. Defendant
6 lacks information sufficient to form a belief as to the remaining allegations, and on that basis denies
7 them.

8 164. Defendant admits that Benjamin J.R. was in ICE custody until his release from ICE
9 custody on or about March 18, 2019. Defendant admits on or about July 22, 2018, William was
10 transported with a SWK escort to BCFS in Texas, to be reunified with his father; however, the
11 reunification did not take place and William returned to SWK. On November 2, 2018, in accordance
12 with his Benjamin J.R.'s wishes, William was released to his family member, as an approved sponsor, in
13 Oakland, California. Defendant lacks information sufficient to form a belief as to the remaining
14 allegations in this paragraph, and on that basis denies them.

15 165. Defendant admits that the last recorded phone call between William, while at SWK, and
16 Benjamin J.R., while in ICE custody, was on or about November 1, 2018, a day before William's release
17 from ORR. Defendant lacks information sufficient to form a belief as to the remaining allegations, and
18 on that basis denies them.

19 166. Defendant admits allegations contained in the first sentence. Defendant further admits
20 that the credible fear interview was conducted with Mam interpretation and admits that that the asylum
21 officer found that Benjamin J.R. had a credible fear of persecution. Defendant lacks sufficient
22 information to form a belief as to the remaining allegations, and on that basis denies them.

23 167. Defendant admits that Benjamin J.R. was released on his own recognizance from ICE
24 custody on or about March 18, 2019 after a \$10,000 bond was posted. Defendant lacks information
25 sufficient to form a belief as to the remaining allegations, and on that basis denies them.

26 168. Defendant admits neither Benjamin J.R. nor William were ever charged with or convicted
27 of a crime in the United States, but avers that Benjamin J.R. was referred for prosecution, and that such
28 prosecution was declined.

1 169. Defendant lacks information sufficient to form a belief as to these allegations, and on that
2 basis denies them.

3 170. Defendant lacks information sufficient to form a belief as to these allegations, and on that
4 basis denies them.

5 171. Defendant lacks information sufficient to form a belief as to the intent of policymakers as
6 alleged in this paragraph. Defendant denies that the purpose of the DOJ initiated Zero-Tolerance policy
7 was as stated in this paragraph. The remaining allegations are not statements of fact but conclusions of
8 law to which no response is required. To the extent a response is deemed required, Defendant denies the
9 allegations in this paragraph.

10 172. These allegations are not statements of fact but conclusions of law to which no response
11 is required. To the extent a response is deemed required, Defendant denies the allegations in this
12 paragraph.

13 173. Defendant denies that it had a “Family Separation Policy.” The remaining allegations are
14 not statements of fact but conclusions of law to which no response is required. To the extent a response
15 is deemed required, Defendant denies the allegations in this paragraph.

16 174. Defendant denies that it had a “Family Separation Policy.” The remaining allegations are
17 not statements of fact but conclusions of law to which no response is required. To the extent a response
18 is deemed required, Defendant denies the allegations in this paragraph.

19 175. These allegations are not statements of fact but conclusions of law to which no response
20 is required. To the extent a response is deemed required, Defendant denies the allegations in this
21 paragraph.

22 176. Paragraph 176 contains a citation to a CBP policy, to which no further response is
23 required. To the extent a response is deemed necessary, Defendant admits that the partial quotes in
24 paragraph 176 are contained within the U.S. Customs and Border Protection’s *National Standards on*
25 *Transport, Escort, Detention, and Search* (“TEDS”) policy, dated October 2015. Defendant further
26 responds that the citations in question speak for themselves, are best evidence of their contents, and
27 should be read in full context. Defendant denies the rest of the allegations.

28 177. Paragraph 177 contains a citation to a CBP policy, to which no further response is

1 required. To the extent a response is deemed necessary, Defendant admits that the partial quotes in
2 paragraph 177 are contained within the U.S. Customs and Border Protection's *National Standards on*
3 *Transport, Escort, Detention, and Search* ("TEDS") policy, dated October 2015. Defendant further
4 responds that the citations in question speak for themselves, are best evidence of their contents, and
5 should be read in full context. Defendant denies the rest of the allegations.

6 178. These allegations are not statements of fact but conclusions of law to which no response
7 is required. To the extent a response is deemed required, Defendant denies the allegations in this
8 paragraph.

9 179. The statements in Paragraph 179, including the numerous legal case citations, are not
10 statements of fact but are conclusions of law to which no response is required. To the extent that an
11 answer is required, Defendant denies these allegations.

12 180. Paragraph 180 contains a citation to a CBP policy, to which no response is required. To
13 the extent a response is deemed necessary, Defendant admits that the partial quotes in paragraph 180 are
14 contained within the U.S. Customs and Border Protection's *National Standards on Transport, Escort,*
15 *Detention, and Search* ("TEDS") policy, dated October 2015. Defendant further responds that the
16 citations in question speak for themselves, are best evidence of their contents, and should be read in full
17 context. Defendant admits Plaintiffs were apprehended by U.S. Border Patrol and in its custody for
18 varying lengths of time in 2018. Defendant denies the rest of the allegations.

19 181. Paragraph 181 contains a citation to a CBP policy, to which no further response should be
20 required. To the extent a response is deemed necessary, Defendant admits that the partial quotes in
21 paragraph 181 are contained within the U.S. Customs and Border Protection's *National Standards on*
22 *Transport, Escort, Detention, and Search* ("TEDS") policy, dated October 2015. Defendant further
23 responds that the citations in question speak for themselves, are best evidence of their contents, and
24 should be read in full context. Defendant admits that Ignacio P.G. spoke on behalf of Leonel Y.P.G to
25 U.S. Border Patrol agents and stated that Leonel spoke the Mam language. Defendant lacks information
26 sufficient as to form a belief as to the truth of this statement. Defendant denies all remaining allegations.

27 182. Paragraph 182 contains a citation to CBP policy, to which no further response should be
28 required. To the extent a response is deemed necessary, Defendant admits that the partial quotes in

paragraph 182 are contained within the U.S. Customs and Border Protection’s *National Standards on Transport, Escort, Detention, and Search* (“TEDS”) policy, dated October 2015. Defendant further responds that the citations in question speak for themselves, are best evidence of their contents, and should be read in full context. Additionally, Defendant admits that Plaintiffs were apprehended by U.S. Border Patrol and were detained at CBP facilities while in U.S. Border Patrol custody. To the extent the reference to the Spanish word “*hieleras*” is intended to be an allegation that the temperature of CBP facilities were impermissibly cold, Defendant denies this allegation. Defendant denies the remaining allegations.

183. Defendant denies that it had a “Family Separation Policy.” Defendant admits that the U.S. Department of Health and Human Services, Office of the Inspector General Issue Brief, titled *Separated Children Placed in Office of Refugee Resettlement*, dated January 2019 at page 6, reported an increase in UCs placed in ORR custody in 2017 creating operational challenges including a shortfall of available beds at state-licensed facilities for younger children. The allegation that the government ignored applicable child welfare standards in violation of mandatory duties is not a statement of fact but conclusion of law to which no response is required. The remaining allegations are denied.

184. Defendant denies these allegations.

185. Defendant denies that it had a “Family Separation Policy.” The remaining allegations are not statements of fact but conclusions of law to which no response is required.

CAUSES OF ACTION

COUNT 1 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

186. Defendant repeats and incorporates by this reference its responses to each and every allegation contained in paragraphs 1 through 185 as if set forth herein. To the extent a response is required, Defendant denies this allegation.

187. Defendant lacks information sufficient to form a belief as to the subjective knowledge of the unidentified federal officials referenced in this paragraph. The remaining allegations are not statements of fact but conclusions of law to which no response is required. To the extent a response is required, Defendant denies this allegation.

188. Defendant lacks information sufficient to form a belief as to the emotional states of

1 Plaintiffs.

2 189. This allegation is not a statement of fact but a conclusion of law to which no response is
3 required. To the extent a response is required, Defendant denies this allegation.

4 **COUNT 2 – NEGLIGENCE**

5 190. Defendant repeats and incorporates by this reference its responses to each and every
6 allegation contained in paragraphs 1 through 189 as if set forth herein. To the extent a response is
7 required, Defendant denies this allegation.

8 191. This allegation is not a statement of fact but a conclusion of law to which no response is
9 required. To the extent a response is required, Defendant denies this allegation.

10 192. This allegation is not a statement of fact but a conclusion of law to which no response is
11 required. To the extent a response is required, Defendant denies this allegation.

12 193. This allegation is not a statement of fact but a conclusion of law to which no response is
13 required. To the extent a response is required, Defendant denies this allegation.

14 **COUNT 3 – ABUSE OF PROCESS**

15 194. Defendant repeats and incorporates by this reference its responses to each and every
16 allegation contained in paragraphs 1 through 193 as if set forth herein. To the extent a response is
17 required, Defendant denies this allegation.

18 195. This allegation is not a statement of fact but a conclusion of law to which no response is
19 required. To the extent a response is required, Defendant denies this allegation.

20 196. This allegation is not a statement of fact but a conclusion of law to which no response is
21 required. To the extent a response is required, Defendant denies this allegation.

22 **COUNT 4 – NEGLIGENT SUPERVISION/BREACH OF FIDUCIARY DUTY**

23 197. Defendant repeats and incorporates by this reference its responses to each and every
24 allegation contained in paragraphs 1 through 196 as if set forth herein. To the extent a response is
25 required, Defendant denies this allegation.

26 198. This allegation is not a statement of fact but a conclusion of law to which no response is
27 required. To the extent a response is required, Defendant denies this allegation.

28 199. This allegation is not a statement of fact but a conclusion of law to which no response is

1 required. To the extent a response is required, Defendant denies this allegation.

2 200. This allegation is not a statement of fact but a conclusion of law to which no response is
3 required. To the extent a response is required, Defendant denies this allegation.

4 201. This allegation is not a statement of fact but a conclusion of law to which no response is
5 required. To the extent a response is required, Defendant denies this allegation.

6 **COUNT 5 – LOSS OF CONSORTIUM**

7 202. Defendant repeats and incorporates by this reference its responses to each and every
8 allegation contained in paragraphs 1 through 201 as if set forth herein. To the extent a response is
9 required, Defendant denies this allegation.

10 203. This allegation is not a statement of fact but a conclusion of law to which no response is
11 required. To the extent a response is required, Defendant denies this allegation.

12 204. This allegation is not a statement of fact but a conclusion of law to which no response is
13 required. To the extent a response is required, Defendant denies this allegation.

14 205. Defendant lacks information sufficient to form a belief as to the extent of any suffering
15 by Plaintiffs. The remaining allegations are not statements of fact but conclusions of law to which no
16 response is required. To the extent a response is required, Defendant denies these allegations.

17 206. This allegation is not a statement of fact but a conclusion of law to which no response is
18 required. To the extent a response is required, Defendant denies this allegation.

19 **COUNT 6 – INTENTIONAL INTERFERENCE WITH CUSTODIAL RELATIONS**

20 207. Defendant repeats and incorporates by this reference its responses to each and every
21 allegation contained in paragraphs 1 through 206 as if set forth herein. To the extent a response is
22 required, Defendant denies this allegation.

23 208. These allegations are not statements of fact but conclusions of law to which no response
24 is required. To the extent a response is required, Defendant denies these allegations.

25 209. Defendant lacks information sufficient to form a belief as to the extent of any suffering
26 by Plaintiffs. The remaining allegations are not statements of fact but conclusions of law to which no
27 response is required. To the extent a response is required, Defendant denies these allegations.

28 210. This allegation is not a statement of fact but a conclusion of law to which no response is

required. To the extent a response is required, Defendant denies this allegation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seeks the relief identified in Paragraphs A to D at page 61, Defendant avers as follows.

A. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to the requested relief.

B. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to the requested relief.

C. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to the requested relief.

D. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to the requested relief.

AFFIRMATIVE AND OTHER DEFENSES

1. The Court lacks subject matter jurisdiction over Plaintiffs' claims.

2. Plaintiffs' claims are barred to the extent that they are based on the exercise or performance or the failure to exercise or perform a discretionary function or duty. 28 U.S.C. § 2680(a).

3. Plaintiffs' claims are barred to the extent that they are based on the execution of federal statutes or regulations. 28 U.S.C. § 2680(a).

4. Plaintiffs have failed to state a claim on which relief may be granted in whole or in part.

5. The United States, through employees, did not owe a legal duty to Plaintiffs.

6. The United States, through employees, did not breach a legal duty owed to Plaintiffs

7. The United States has waived its sovereign immunity only for the actions of "employees of the government" as defined in 28 U.S.C. § 2671.

8. Acts or omissions of the United States, through employees, were not the proximate cause of injury to Plaintiffs.

9. In the event the United States is found to have been negligent or otherwise wrongful, which negligence or wrongful conduct is denied, the superseding and intervening negligence or wrongful conduct of third parties, for whom the United States cannot be held liable, broke any causal

1 connection between the United States' negligence or wrongful conduct and Plaintiffs' alleged injuries,
2 cutting off the legal effect of the United States' negligence or wrongful conduct.

3 10. Plaintiffs' recovery of damages, if any, is limited by federal and applicable state law.

4 11. Plaintiffs' recovery against the United States, if any, is limited to the amount stated in
5 timely and properly presented administrative claims. 28 U.S.C. § 2675(b). To the extent Plaintiffs have
6 not timely or properly presented administrative tort claims, or seek relief different from, or in excess of,
7 that set forth in a timely and properly filed administrative tort claim, Plaintiffs have not exhausted their
8 administrative remedies.

9 12. Plaintiffs may not recover punitive damages, non-monetary damages, or pre-judgment
10 interest under the Federal Tort Claims Act. 28 U.S.C. § 2674.

11 13. To the extent the Court enters a money judgment against the United States, Plaintiffs are
12 entitled to post-judgment interest only in accordance with the provisions of 28 U.S.C. § 1961(b) and 31
13 U.S.C. § 1304(b).

14 14. Plaintiffs' claims are barred by any exception to or limitation on the United States'
15 waiver of sovereign immunity.

16 15. Under the FTCA, the United States only may be held liable in the same manner and to the
17 same extent as a private individual under like circumstances. 28 U.S.C. § 2674.

18 16. To the extent that there are persons who were comparatively at fault, whether or not they
19 are currently parties to this lawsuit, principles of comparative fault apply, and liability must be
20 apportioned or any judgment reduced as set forth under applicable state law.

21 17. Plaintiffs' claims are barred or diminished by Plaintiffs' failure to mitigate damages.

22 18. Plaintiffs' claims are barred to the extent they are based on misrepresentations. 28 U.S.C.
23 § 2680(h).

24 19. The United States specifically reserves the right to raise additional affirmative defenses
25 which become evident through discovery, and to amend its Answer to raise any affirmative defense –
26 including, but not limited to, those identified by Federal Rule 8(c) – not currently known and/or which it
27 may have or through discovery learn may be applicable. asserts that it has, or may have, additional
28 affirmative defenses that are not known to the United States at this time but may be ascertained through

1 discovery.

2 **JURY DEMAND**

3 Defendant demands a trial by jury on any claim so triable.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Defendant prays that:

- 6 1. Plaintiffs take nothing by their Complaint;
- 7 2. The Complaint be dismissed with prejudice;
- 8 3. Judgment be entered in favor of Defendant;
- 9 4. Defendant be awarded its costs of suit;
- 10 5. The Court award such other and further relief as it may deem proper.
- 11
- 12

13 Dated: April 12, 2023

Respectfully submitted,

14 ISMAIL J. RAMSEY
United States Attorney

15 /s/ Kelsey J. Helland
16 Kenneth Brakebill
Kelsey J. Helland
17 Assistant United States Attorneys

18 Counsel for Defendant

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